

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER BRANDON DAVIS,

Plaintiff,

v.

M. PORTILLO, et al.,

Defendants.

Case No.: 1:22-cv-00457-KES-CDB (PC)

**ORDER LIFTING TEMPORARY STAY**

(Doc. 59)

**FINDINGS AND RECOMMENDATIONS TO  
DISMISS ACTION WITHOUT PREJUDICE  
FOR PLAINTIFF'S FAILURE TO OBEY  
LOCAL RULES AND FAILURE TO  
PROSECUTE**

**14-DAY OBJECTION DEADLINE**

Plaintiff Christopher Brandon Davis is proceeding pro se and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983.

**I. INTRODUCTION**

On January 10, 2025, the Court issued its Order Granting Plaintiff's Request for Temporary Stay. (Doc. 59.) More particularly, this action was stayed for 120 days and the Discovery and Scheduling Order previously issued was vacated. (*Id.* at 2-3.) Plaintiff was served with a copy of the order to his address of record: Christopher Brandon Davis, AN-4950, Salinas Valley State Prison, P.O. Box 1050, Soledad, CA 93960-1050. Nevertheless, the Court's order was returned by the United States Postal Service marked "Undeliverable," "Return to Sender," "Refused," "Unable to Forward," and "Paroled" on February 21, 2025.

## II. DISCUSSION

Initially, because more than 120 days have elapsed since the Court issued its January 10, 2025, order staying these proceedings temporarily, the stay will be lifted. Next, the Court considers Plaintiff's failure to keep the Court apprised of his current address.

### *Applicable Legal Standards*

The Local Rules, corresponding with Federal Rule of Civil Procedure 11, provide, "[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for the imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court." Local Rule 110. "District courts have inherent power to control their dockets" and, in exercising that power, may impose sanctions, including dismissal of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to prosecute an action, obey a court order, or comply with local rules. *See, e.g., Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules).

Local Rule 182(f) provides that a "pro se party is under a continuing duty to notify the Clerk and all other parties of any change of address .... Absent such notice, service of documents at the prior address of the ... pro se party shall be fully effective." Further, Local Rule 183(b) states that a "party appearing in propria persona shall keep the Court and opposing parties advised as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing parties within thirty (30) days thereafter of a current address, the Court may dismiss the action without prejudice for failure to prosecute." (Emphasis omitted.)

"In determining whether to dismiss an action for lack of prosecution, the district court is required to weigh several factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public

1 policy favoring disposition of cases on their merits; and (5) the availability of less drastic  
 2 sanctions.” *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks &  
 3 citation omitted). These factors guide a court in deciding what to do and are not conditions that  
 4 must be met in order for a court to take action. *In re Phenylpropanolamine (PPA) Products*  
 5 *Liability Litigation*, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted).

### 6 *Analysis*

7 Here, Plaintiff has failed to file a notice of change of address or to otherwise advise the  
 8 Court of his current address. As noted above, according to the Court’s docket, Plaintiff’s address  
 9 of record is “Salinas Valley State Prison, P.O. Box 1050, Soledad, CA 93960-1050.” All orders  
 10 issued by the Court since November 28, 2022,<sup>1</sup> has been served at that address. On February 21,  
 11 2025, mail was returned to the Court marked “Undeliverable,” “Return to Sender,” “Refused,”  
 12 “Unable to Forward,” and “Paroled.” Because Plaintiff has failed keep the Court apprised of his  
 13 current address, this action is subject to dismissal. Given the Court’s inability to communicate  
 14 with Plaintiff, there are no other reasonable alternatives available to address Plaintiff’s failure to  
 15 obey the Local Rules and failure to prosecute. Thus, the first and second factors — the  
 16 expeditious resolution of litigation and the Court’s need to manage its docket — weigh in favor of  
 17 dismissal. *Carey*, 856 F.2d at 1440.

18 The third factor, risk of prejudice to defendant, also weighs fairly in favor of dismissal  
 19 since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an  
 20 action. *See Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). Here, Defendants have  
 21 appeared in the action and participated in discovery prior to the temporary stay of these  
 22 proceedings. (*See Docs. 32, 38, 56.*) However, these proceedings are now at a standstill because  
 23 of Plaintiff’s failure to keep the Court apprised of his current address. Plaintiff has unreasonably  
 24 delayed the prosecution of this action since at least February 21, 2025, when mail directed to  
 25 Plaintiff was returned to the Court as undeliverable. Thus, the third factor also weighs in favor of  
 26 dismissal. *Carey*, 856 F.2d at 1440-41.

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27  
 28 <sup>1</sup> On that date, Plaintiff filed a Notice of Change of Address with the Court. (*See Doc. 18.*)

1 The fourth factor usually weighs against dismissal because public policy favors  
 2 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However,  
 3 “this factor lends little support to a party whose responsibility it is to move a case toward  
 4 disposition on the merits but whose conduct impedes progress in that direction.” *In re PPA*, 460  
 5 F.3d at 1228. Plaintiff has not moved this case forward toward disposition on the merits. It is his  
 6 responsibility to do so. Instead, Plaintiff has stopped communicating with the Court altogether  
 7 and has failed to comply with this Court’s Local Rules. Therefore, the fourth factor — the public  
 8 policy favoring disposition of cases on their merits — also weighs in favor of dismissal. *Carey*,  
 9 856 F.2d at 1440.

10 Finally, the Court’s warning to a party that failure to obey the court’s orders will result in  
 11 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262.  
 12 Here, in the First Informational Order in Prisoner/Civil Detainee Civil Rights Case issued April  
 13 19, 2022, Plaintiff was advised as follows: “In litigating this action, the parties must comply with  
 14 this Order, the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), and the Local Rules of the  
 15 United States District Court, Eastern District of California (“Local Rules”), as modified by this  
 16 Order. Failure to so comply will be grounds for imposition of sanctions which may include  
 17 dismissal of the case. Local Rule 110; Fed. R. Civ. P. 41(b).” (*See* Doc. 5 at 1.) That Order further  
 18 advised: “A pro se plaintiff must keep the Court and opposing parties informed of the party’s  
 19 correct current address. Local Rule 182(f). If a party moves to a different address without filing  
 20 and serving a notice of change of address, documents served at a party’s old address of record  
 21 shall be deemed received even if not actually received. ... If mail directed to a pro se plaintiff at  
 22 the address of record is returned by the United States Postal Service as undeliverable, the order  
 23 will not be re-served a second time absent a notice of change of address. If a pro se plaintiff’s  
 24 address is not updated within sixty-three days of mail being returned as undeliverable, the case  
 25 will be dismissed for failure to prosecute.” (*Id.* at 5.)<sup>2</sup> Significantly too, the Court notes that

26 \_\_\_\_\_  
 27 <sup>2</sup> Although the Local Rules now provide that a change of address must be filed within 30 days rather than 63 days,  
 28 the timing is not relevant here. Eighty (80) days have elapsed since the Court’s most recent order was returned  
 marked undeliverable by the postal service. Therefore, Plaintiff has failed to comply with either version of Local  
 Rule 183(b).

1 Plaintiff recognized his obligation to keep the Court advised of his current address in his request  
2 for a temporary stay filed on December 16, 2024. (*See* Doc. 58 at 4 [“When Plaintiff paroled from  
3 Salinas Valley State Prison, he shall keep the defendants and the court informed of his change of  
4 address as is required ....”].) Thus, the undersigned finds Plaintiff had adequate warning that  
5 dismissal could result from his noncompliance with this Court’s Local Rules and/or failure to  
6 update his address. Thus, the fifth factor — the availability of less drastic sanctions —weighs in  
7 favor of dismissal. *Ferdik*, 963 F.2d at 1262; *Carey*, 856 F.2d at 1440.

8 In sum, Plaintiff has failed to comply with this Court’s Local Rules, and in doing so, has  
9 failed to prosecute this action. Having weighed the equities and considered the relevant factors  
10 noted above, the undersigned concludes that dismissal of the action is warranted.

### 11 **III. CONCLUSION, ORDER AND RECOMMENDATION**

12 Accordingly, the Court **HEREBY ORDERS** that the temporary 120-day stay of these  
13 proceedings (Doc. 59) is **LIFTED**.

14 Further, for the reasons stated above, the Court **HEREBY RECOMMENDS** that this  
15 action be dismissed, without prejudice, based on Plaintiff’s failure to obey the Local Rules and to  
16 prosecute this action.

17 These Findings and Recommendations will be submitted to the United States District  
18 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). **Within 14 days**  
19 after being served with a copy of these Findings and Recommendations, a party may file written  
20 objections with the Court. Local Rule 304(b). The document should be captioned, “Objections to  
21 Magistrate Judge’s Findings and Recommendations” and **shall not exceed 15 pages** without  
22 leave of Court and good cause shown. The Court will not consider exhibits attached to the  
23 Objections. To the extent a party wishes to refer to any exhibit(s), the party should reference the  
24 exhibit in the record by its CM/ECF document and page number, when possible, or otherwise  
25 reference the exhibit with specificity. Any pages filed in excess of the 15-page limitation may be  
26 disregarded by the District Judge when reviewing these Findings and Recommendations under 28  
27 U.S.C. § 636(b)(1)(C). A party’s failure to file any objections within the specified time may result  
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1 in the waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

2 IT IS SO ORDERED.

3 Dated: May 12, 2025

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UNITED STATES MAGISTRATE JUDGE